

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
June 21, 2005

Grendel

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Carl B. Viniar

v.

Beverly Clark

Opposition No. 91156752
to application Serial No. 76096710
filed on July 26, 2000

Norman E. Lehrer of Norman E. Lehrer, P.C. for Carl B.
Viniar.

Judith M. Riley of Gifford, Krass, Groh, Sprinkle, Anderson
& Citkowski, P.C. for Beverly Clark.

Before Grendel, Holtzman and Zervas, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant, Beverly Clark, seeks registration on the
Principal Register of the mark MEDIATION WORKS (in standard
character form; MEDIATION disclaimed) for services recited
in the application as "mediation and dispute resolution

services."¹

Opposer, Carl B. Viniar, has opposed registration on the ground that applicant's mark, as applied to applicant's services, so resembles the mark MEDIATION WORKS, previously registered by opposer (in standard character form; MEDIATION disclaimed) for "mediation and alternative dispute resolution services,"² as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant filed an answer by which she denied the salient allegations of the notice of opposition.

Opposer presented evidence at trial, i.e., a status and title copy of its pleaded registration. Applicant submitted no evidence. Opposer filed a main brief on the case, but applicant did not. No oral hearing was requested.

Because opposer has made of record a status and title copy of its pleaded Registration No. 2702869, which shows that the registration is in effect and is owned by opposer, we find that opposer has standing to oppose registration of applicant's mark. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000). Moreover,

¹ Serial No. 76096710, filed July 26, 2000. The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a). In the application, applicant alleges that August 27, 1991 is the date of first use of the mark anywhere, and that August 27, 1992 is the date of first use in commerce.

² Registration No. 2702869, issued April 1, 2003.

because opposer's pleaded registration is of record, Section 2(d) priority is not an issue in this case. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We find that applicant's mark is identical to opposer's previously-registered mark. We also find that applicant's services, as recited in the application, encompass and are legally identical to the services recited in opposer's pleaded registration. Given such legal identity of the parties' respective services, we also find that the services are marketed in the same trade channels and to the same classes of purchasers. Based on these findings, we conclude that a likelihood of confusion exists.

Decision: The opposition is sustained.